

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,

Plaintiffs,

v.

RICK PERRY, *et al.*,

Defendants.

Civil Action No. 2:13-cv-193 (NGR)

UNITED STATES OF AMERICA,

Plaintiff,

TEXAS LEAGUE OF YOUNG VOTERS
EDUCATION FUND, *et al.*,

Plaintiff-Intervenors,

TEXAS ASSOCIATION OF HISPANIC
COUNTY JUDGES AND COUNTY
COMMISSIONERS, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF TEXAS, *et al.*,

Defendants.

Civil Action No. 2:13-cv-263 (NGR)

TEXAS STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,

Plaintiffs,

v.

NANDITA BERRY, *et al.*,

Defendants.

Civil Action No. 2:13-cv-291 (NGR)

BELINDA ORTIZ, *et al.*,

Plaintiffs,

v.

STATE OF TEXAS, *et al.*,

Defendants

Civil Action No. 2:13-cv-348 (NGR)

JOINT MOTION TO ENTER AMENDED SCHEDULING ORDER

All plaintiffs and plaintiff-intervenors in the consolidated cases jointly move that the Court enter the accompanying amended scheduling order. The proposed amended scheduling order is designed to maintain the September 2, 2014, trial date, while affording the parties necessary adjustments to the fact and expert discovery periods. The proposed scheduling order also modifies the deadlines for the filing of proposed findings of fact and conclusions of law, dispositive and Daubert motions, and the parties' joint pretrial order. *See* Ex. 1.

Adjustment of the current fact and expert discovery periods is essential to provide sufficient time to conduct comparisons of state databases and federal databases, to prepare expert analysis of those comparisons, to resolve the parties' disputes surrounding legislative privilege, and to permit discovery of legislative documents—if the United States' pending motion to

compel is granted—and depositions of legislators. Plaintiffs and plaintiff-intervenors respectfully request that the Court consider this motion on an expedited basis.

**Discovery Deadlines Should be Adjusted to Provide Sufficient Time
for Discovery Related to Data and Legislators**

Under the current scheduling order, fact discovery closes on May 2, 2014, and plaintiffs' expert reports are due on May 9, 2014. *See* Scheduling Order (ECF No. 86). Under the proposed amended scheduling order, fact discovery would close on June 27, 2014, and plaintiffs' expert disclosures would be due on that same date.

Plaintiffs and plaintiff-intervenors seek modified fact discovery and expert discovery deadlines to ensure that the federal agencies will have sufficient time to conduct comparisons of state and federal databases and for the parties' experts to analyze those comparisons. Based on currently available information, the United States estimates that all federal agencies will be able to complete the database comparisons, along with necessary data preparation and programming, and that the United States will be able to provide the comparison results to all parties by May 30, 2014. The comparison results provided to all parties will consist of billions of records. Based on the volume and complexity of this data, plaintiffs and plaintiffs-intervenors request that their expert reports be due on June 27, 2014, four weeks after the results are disclosed to all parties.

Since the hearing held on March 5, 2014, all parties have agreed to a matching protocol under which the federal agencies will conduct comparisons. The comparisons involve multiple matching sweeps through many millions of records that the federal agencies maintain, using different combinations of record identifiers. Before executing any comparison of Texas's voter registration records and the federal agencies' database records, the five federal agencies must complete several predicate steps, which are already underway. The relevant data must be

exported from each federal agency's database, and certain data standardization and combination steps must be undertaken. These tasks require agency staff to design unique programming code that will communicate with the agency's existing database software, and execute the data preparation steps and record comparisons proposed by the parties to this litigation.

A second critical adjustment that the plaintiffs and plaintiff-intervenors request is that the scheduling order be modified to set June 27, 2014, as the deadline for fact discovery. This adjustment is necessary to allow sufficient time for the Court to rule on the United States' pending motion to compel, resolve the parties' disputes related to legislative and attorney-client privileges and, if permitted by the Court, for legislative documents to be produced and reviewed and for depositions of legislators to be taken. All parties have been diligent in propounding and responding to written discovery requests,¹ and all parties, particularly the United States, have expended considerable resources in facilitating a mutually agreed upon process for jointly conducting data discovery. Delays in discovery nevertheless have occurred and, due to the substantial discovery that remains to be taken, an extension of the fact discovery deadline is warranted.

In particular, we note that a significant amount of the factual discovery related to whether the State enacted SB 14, even in part, for discriminatory purposes, is dependent on the resolution of the defendants' broad assertion of a legislative privilege, as well as defendants' recent claim that certain legislative documents must be obtained through subpoenas and not through party discovery. This will affect not just the manner in which relevant documents will be produced,

¹ To date, the parties have propounded and have responded, at least in part, to numerous requests for production of documents, one set of interrogatories, and one set of requests for admission. Plaintiffs and plaintiff-intervenors have also noticed depositions under Federal Rule of Civil Procedure 30(b)(6)

but just as importantly, the number and length of the depositions that the parties will take of legislators. A status conference on this issue is scheduled for March 24, less than six weeks before the current close of fact discovery on May 2, 2014. A ruling that requires the discovery to be conducted by subpoena and limits the scope of legislative privilege, and plaintiffs' subsequent efforts to obtain legislative documents and depositions of legislators, will produce prolonged motion practice in this Court and will likely also involve the State's three other federal judicial districts.

**Deadlines Following the Close of Fact Discovery Should be Compressed
to Accommodate the September 2 Trial Date**

Plaintiffs and plaintiff-intervenors also request that all deadlines following the close of fact discovery and disclosure of plaintiffs' expert reports on June 27, 2014, be adjusted to ensure that trial will commence on September 2, 2014. The proposed modified schedule compresses the expert discovery period and eliminates reply briefs for dispositive and Daubert motions for all parties. Plaintiffs and plaintiff-intervenors acknowledge that these adjustments, if ordered, will impose burdens on all parties and the Court alike.

Under the current schedule, plaintiffs' expert reports are due on May 9, 2014, defendants' expert reports are due on June 6, 2014, and plaintiffs' expert reply reports are due on June 30, 2014. The proposed modified schedule changes those deadlines to June 27, 2014, July 18, 2014, and July 28, 2014, respectively. Plaintiffs are prepared to bear the greater share of the burdens this compression will cause. For example, while the modified schedule allows defendants three, instead of four, weeks to respond to plaintiffs' expert reports, the period for plaintiffs' reply will be cut in half from 24 days to 10 days. In addition, the schedule affords defendants seven weeks, following disclosure of the output of database comparisons to all parties by May 30, 2014, in

which to analyze the data and prepare their expert reports, whereas it provides plaintiffs and plaintiff-intervenors with only four weeks after disclosure of the output of the database comparisons to prepare their expert reports.

Finally, the proposed order maintains deadlines for the briefing of dispositive and Daubert motions but eliminates reply briefs for those motions. Although defendants have informally expressed their concerns to the United States about this modification, this Court's Local Rules do not provide for reply briefs, *see* S.D. Tex. Civ. R. 7, nor does this Court's standard Proposed Scheduling Order provide for reply briefs for dispositive or Daubert motions. *See, e.g.*, Order for Conference & Disclosure of Interested Parties at 7 (ECF No. 2).²

Conclusion

For the reasons set out above, plaintiffs and plaintiff-intervenors respectfully request that this Court enter the attached proposed amended scheduling order.

² The proposed scheduling order also suggests that if the Court's calendar permits, the final pretrial conference be held on August 27, 2014.

Date: March 13, 2014

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 7.1(D)(1), I hereby aver that on March 13, 2014, I conferred with counsel for defendants in an effort to obtain the requested discovery without court intervention. Counsel cannot agree about the disposition of the instant motion.

/s/ Elizabeth S. Westfall
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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2014, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

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